

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

SHERMAN BALCH,

Appellant,

v.

THE BANK OF NEW YORK MELLON, as Trustee for the
holders of MASTR Alternative Loan Trust 2006-2,

Appellee.

No. 2D21-566

October 28, 2022

Appeal from the Circuit Court for Polk County; William D. Sites,
Judge.

Sherman Balch, pro se.

Michael R. Esposito, Nicole R. Topper and Paul M. Messina, Jr., of
Blank Rome LLP, Tampa, for Appellee.

SLEET, Judge.

Sherman Balch, pro se, attempts to appeal the final judgment
of foreclosure entered in favor of The Bank of New York Mellon and

against borrower Jennifer Robinson. Balch had moved to intervene in the foreclosure action below, claiming he held a leasehold interest in the property. The trial court entered an order on his motion to intervene, neither denying nor granting the motion but instead stating, "Sherman Balch, the entity or person seeking to intervene must provide to the court and opposing counsel by 5 p.m. Friday, January 29, 2021, any proof that he had a legal right to possession of the property at issue that occurred prior to the date of this lawsuit filed on April 10, 2018."

Balch chose, however, not to comply with that order. Instead, he let the January 29, 2021, deadline pass, and on February 8, 2021, he filed a notice of appeal attempting to challenge that order in this court. While that appeal was pending, the trial court entered the final judgment of foreclosure against the borrower; Balch was not a named party to the judgment. Balch then filed an amended notice of appeal adding the final judgment as part of this appeal.

The Bank maintains that because Balch was not a party to the action below and was not named in the final judgment, he lacks

standing to challenge that judgment on appeal. We agree and dismiss the instant appeal.

The trial court's order on Balch's motion to intervene is not independently appealable. It did not grant or deny Balch's motion but instead instructed him that further action on his part was necessary before the court could rule. By failing to comply with the trial court's order directing him to provide proof that his right of possession existed at the time the suit was filed, Balch essentially abandoned his motion to intervene. He never obtained a ruling on the motion, and his failure to do so forecloses his ability to raise the issue on appeal. *See TLC Props., Inc. v. Dep't of Transp.*, 292 So. 3d 10, 18 (Fla. 1st DCA 2020) ("To be preserved for appeal, the issue or legal argument must be raised *and* ruled on by the trial court." (underlined emphasis added) (citing § 924.051(1)(b), Fla. Stat.)); *cf.* *R.J. Reynolds Tobacco Co. v. Grossman*, 250 So. 3d 91, 94 (Fla. 4th DCA 2018) ("Having failed to obtain a ruling on the constitutionality of [the statute], [Grossman] should not be permitted to present arguments regarding his constitutional challenge on appeal.").

Furthermore, Balch does not have standing to appeal the final judgment. "The general rule is that a non-party [sic] is a 'stranger

to the record' who cannot 'transfer jurisdiction to the appellate court.' " *YHT & Assocs. v. Nationstar Mortg. LLC*, 177 So. 3d 641, 643 (Fla. 2d DCA 2015) (quoting *Barnett v. Barnett*, 705 So. 2d 63, 64 (Fla. 4th DCA 1997)); *see also King v. Brown*, 55 So. 2d 187, 188 (Fla. 1951) ("[B]efore a person may bring an appeal he must be a party or privy to the record and must show that he is, or will be, injuriously affected by the order sought to be reviewed."). Balch was not a named defendant below, and by not complying with the trial court's order on his motion to intervene, he failed to establish any interest he may have in the property that may be "injuriously affected" by the final judgment. *See King*, 55 So. 2d at 188.

Because Balch was not a party to the final judgment and essentially abandoned his motion to intervene, we dismiss this appeal for lack of standing.

Dismissed.

CASANUEVA and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.